

Specific Taxation Issues Of Native Americans In Montana

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Terms

Indian/Native American – an individual descended from an Indian/Native American

Enrolled Tribal Member – an Indian who is a member of an Indian tribe

Reservation – a geographic area set aside for one or more specific Indian tribes

Tribe – a political organization consisting of enrolled tribal members

Non-Indian – an individual not descended from an Indian/Native American

Non-Member Indian – an Indian who works and/or resides on another tribe's reservation

Fee Land – real property which is freely alienable

Trust Land – real property owned by the United States but held for the benefit of the tribe or enrolled tribal member

Legal Incidence of Tax – the person who is responsible for paying the tax

General Principles (usually but not always true)

1. An Indian who is not enrolled in a tribe and who does not live on a reservation is treated the same for state tax purposes as a non-Indian.
2. An enrolled tribal member living and working on his own tribe's reservation is exempt from state taxation.
3. Tribes are exempt from state taxation on their own reservation.
4. Tribes and enrolled tribal members are not exempt from taxation off the reservation.
5. While states are generally free to provide tax benefits to Indians, taxation of Indians is controlled by federal law, not state law.
6. The law governing taxation of Indians is not static, although court decisions over the past 20 years have resolved some taxation issues.

Specific Taxation Issues

Montana Individual Income Tax

1. Tribes and enrolled tribal members living and working on their own reservation are exempt.
2. Enrolled tribal members living and working on another tribe's reservation are not exempt.
3. Enrolled tribal members living and working off a reservation are taxed.
4. Enrolled tribal members living off a reservation but working on a reservation, or vice versa, are taxed.

Property Tax (real property)

1. Land held by the United States in trust for a tribe or an enrolled tribal member is exempt.
2. Land held in fee by a tribe or an enrolled tribal member is taxable.
3. Land held by a non-member Indian or a non-Indian is taxable.

Property Tax (personal property)

1. Property of a tribe or an enrolled tribal member on the reservation is exempt.
2. Property of a enrolled tribal member off the reservation is taxable.
3. Property of a non-member Indian or non-Indian is taxable.

Sales Tax

1. Sales made on a reservation to non-Indians and to non-member Indians are taxable.
2. Sales to enrolled tribal members on their own reservation are exempt.

Corporation License Tax

1. Corporations owned by a tribe are exempt with respect to reservation income.
2. Corporations owned by shareholders, some of whom are enrolled tribal members, are exempt with respect to reservation income. It is unclear how many and/or what percentage must be enrolled tribal members for the exemption to apply.
3. Corporations owned by non-member Indians or non-Indians is taxable with respect to reservation income.